

IN THE SUPREME COURT OF OHIO

Board of Education of the Huber Heights City School District,	:	
	:	Case No. 2015-1388
Appellant,	:	
	:	
v.	:	
	:	Appeal from Ohio Board of Tax Appeal - Case No. 2014-4891
Montgomery County Board of Revision, Montgomery County Auditor, and Huber Heights ABG, LLC,	:	
	:	
Appellees.	:	

**REPLY BRIEF OF APPELLANT BOARD OF EDUCATION OF THE
HUBER HEIGHTS CITY SCHOOL DISTRICT**

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TABLE OF CONTENTS

Table of Authorities ii

Law and Argument 1

Conclusion 8

Certificate of Service 9

TABLE OF AUTHORITIES

Cases

<i>Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> , 90 Ohio St.3d 564; 2001-Ohio-16.....	7
<i>Dublin City Schools v. Franklin Cty. Bd. of Rev.</i> , 139 Ohio St.3d 193, 2013-Ohio-4543	6
<i>Vandalia-Butler City School Dist. Bd. of Edn v. Montgomery Cty. Bd. of Revision</i> , 106 Ohio St.3d 157, 2005-Ohio-4385.....	5
<i>Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision</i> , 130 Ohio St.3d 291, 2011-Ohio-5078.....	5, 8
<i>Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> , 140 Ohio St.3d 248, 2014-Ohio-3620.....	8

LAW AND ARGUMENT

In this case, both parties agree with the BTA's determination that the value determined by the Montgomery County Board of Revision ("BOR") cannot be replicated and is erroneous. Accordingly, the question before this Court is whether the BTA, upon finding that the BOR's determination was erroneous, should have reinstated the Auditor's value or whether there was sufficient evidence in the record to enable the BTA to independently determine value. Because the Appellee property owner failed to meet its initial burden of producing competent probative evidence to establish value or to establish that the Auditor originally overvalued the property, the BTA was required to reinstate the Auditor's original value for tax year 2013.

In this case, the only evidence presented by the Appellee property owner consists of Mr. Rentschler's BOR testimony, and even he acknowledged that the improvements made to the property after the June 2012 sale but prior to the 2013 tax lien date added value to the property and rendered the June 2012 sale price nonprobative. Mr. Rentschler specifically argued that the value of the property as of January 1, 2013 should be \$850,000 – the June 2012 purchase price of \$550,000 plus the cost of improvements made to the property after the sale. At no time before the BOR or the BTA did the Appellee property owner assert that the \$550,000 purchase price paid in the June 2012 sale of the property was the best evidence of the value of the property as of January 1, 2013. Despite the fact that there is absolutely no evidence in the record relating to the June 2012 AND the fact that both parties recognized that the property was in a substantially different state as of the tax lien date than it was at the time of the sale due to the significant improvements and a split from the parent parcel, the BTA erroneously decreased the value of the property to the \$550,000 sale price for tax year 2013.

In its Merit Brief, Appellee repeatedly claims that there is "undisputed evidence" in the

record to establish that the subject property transferred for \$550,000 on June 25, 2012 in an arm's length transaction. However, merely repeating a statement over and over again does not make it so. Contrary to the Appellee property owner's assertions, the record herein is completely devoid of any evidence relating to the June 2012 sale of the subject property. This lack of evidence can probably be explained by the fact that neither party advocated for reliance upon the sale price to determine the value of the property.

In addition, Appellee mistakenly claims that a copy of the settlement statement for the June 2012 sale of the subject property is properly part of the record in this case. As set forth in the BOE's initial brief, this document was never presented at hearing or admitted into evidence herein. The Appellee claims that "[t]he BOE unquestionably had the opportunity to object to the presentation of these documents at the BOR hearing." (Appellee brief, p10) However, this statement is completely false. The settlement statement was not presented at the BOR hearing and therefore, the BOE never had an opportunity to review the document or to object to its presentation. While the settlement statement may have been attached to the Appellee's complaint, it was never provided to the BOE. In order for the settlement statement to be admitted as evidence, the Appellee was required to present it at the BOR hearing and authenticate and lay a proper foundation for the documents through the testimony of a witness with personal knowledge of the June 2012 sale. The Appellee failed to submit any documentation relating to the June 2012 sale at the BOR hearing, such as a deed, conveyance fee statement or settlement statement; presumably because even the Appellee recognized that the sale was not indicative of the value of the property due to the substantial improvements made to the property and the subsequent split from the parent parcel. As previously stated, Appellee's own witness argued that the value of the property should be \$850,000 - the sale price plus the cost of improvements.

Herein, the BTA's reliance upon a document that was not properly admitted into evidence before the BTA was clearly reversible error. Appellee now argues that this document somehow became evidence despite the fact that it was not properly admitted, simply because the BOE failed to object to its inclusion in the transcript. However, Appellee cites absolutely no authority for this absurd proposition, presumably because none exists. The settlement statement was never presented at an evidentiary hearing and therefore it is not part of the record herein. It was improper for the BTA to rely upon the document in rendering its decision in this case.

Appellee now attempts to diminish its obvious error in failing to present sale documentation at the BOR hearing by attaching certain sale documents to its brief filed with this Court. However, submission of new evidence to this Court is clearly improper. Evidentiary documents must be submitted at an evidentiary hearing in order to afford all parties the opportunity to question the document's authenticity, as well as the reliability of the information contained in the documentation. As set forth by the BOE in its initial brief, this Court has consistently held that documents produced outside of hearing cannot be considered evidence. In addition, because the attached documents were in existence at the time of the BOR hearing and the Appellee property owner failed to show good cause for failing to present the documents at the BOR hearing, the Appellee is precluded from presenting the documents on appeal. R.C. 5715.19(G) provides

A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.

In this case, the BOR properly determined that the June 2012 sale price was not indicative of the

value of the subject property as of January 1, 2013 because of the substantial improvements made to the property after the sale and prior to the tax lien date and the subsequent split from the parent parcel. In its decision, the BTA fails to state why it overruled this finding of the BOR, which is especially troubling in light of the fact that even the Appellee property owner acknowledged that the value of the property increased as a result of the improvements.

In its brief, the Appellee property owner attempts to divert this Court's attention from the issues by arguing that the BOE failed to meet its burden of producing evidence. However, the burden of production in this case never shifted to the BOE because the property owner never met its initial burden of proving that the Auditor overvalued the subject property. The burden of producing evidence does not shift to the BOE on appeal simply because the BOR incorrectly determined a value other than that originally assessed by the Auditor. While it is true that the party challenging the decision of a board of revision has the burden of proof on appeal, the appealing party does not have to produce additional evidence to meet this burden. The burden of proof encompasses both the burden of persuasion and the burden of producing evidence. This Court has made it clear that the party appealing a board of revision decision to the BTA does NOT have the burden of producing additional evidence to the BTA to meet its burden of persuasion. Rather, a party appealing a board of revision decision to the BTA can meet its burden by demonstrating that the evidence in the record is insufficient to support the board of revision's decision.

In *Vandalia-Butler City School Dist. Bd. of Edn v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385, this Court held:

To be sure, the burden of proof rested on the board of education before the BTA, but "[h]ow a party seeking a change in valuation attempts to meet its burden of proof * * * is a matter for that party's judgment." *Snavely v. Erie Cty. Bd. of*

Revision (1997), 78 Ohio St.3d 500, 503, 1997 Ohio 28, 678 N.E.2d 1373. The board of education could meet its burden of proof before the BTA by showing through cross-examination of Timberlake's appraiser and in a post hearing brief -- that the board of revision had erred when it reduced the value from the amount first determined by the auditor. *Id.* at ¶9 (Emphasis added.)

Subsequently, in *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, the Court held:

It is well settled that when the BTA reviews a board-of-revision decision based upon the record developed before that tribunal, the BTA has the duty to "independently weigh and evaluate all evidence properly before it" in arriving at its own decision. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011 Ohio 2258, 949 N.E.2d 1, ¶ 17, quoting *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, 1996 Ohio 432, 665 N.E.2d 1098 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the board of revision] transcript"). Equally well established is the proposition that "decisions of boards of revision should not be accorded a presumption of validity." *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 114 Ohio St.3d 493, 2007 Ohio 4641, 873 N.E.2d 298, ¶ 23, citing *Columbus Bd. of Edn. at 15 and Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 494, 1994 Ohio 501, 628 N.E.2d 1365. Read in conjunction, these two principles foreclose the approach taken by the BTA in this case." (Emphasis added.)

The Court went on the state:

While it is true that the party that appeals to the BTA in a valuation case typically does bear the burden of showing a different value, see *Colonial Village*, 123 Ohio St.3d 268, 2009 Ohio 4975, 915 N.E.2d 1196, ¶ 23, the school board's appeal in this case rested upon a claim of legal error. In prosecuting such a claim, the appellant's burden is to show the presence of reversible error, and proof of a new value may not be necessary when the appeal seeks a return to the auditor's valuation. *Id.* at ¶ 31 (county does not "acquire the burden of proving the general accuracy of the appraisals on which [it] initially relied"); accord *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010 Ohio 1921, 929 N.E.2d 426, ¶ 31, citing *Colonial Village* at ¶ 31 (auditor's initial determination of value for a given tax year "possesses an increment of prima-facie probative force").

Based upon the foregoing, it is clear that the BOE met its burden before the BTA below by demonstrating that the evidence in the record for tax year 2013 was insufficient to substantiate the reduction granted by the BOR.

The facts of this case are very different than those before the Court in *Dublin City Schools v. Franklin Cty. Bd. of Rev.*, 139 Ohio St.3d 193, 2013-Ohio-4543 (“*Eastbank*”). In *Eastbank*, the property owner submitted evidence to establish that the Auditor overvalued the property. Specifically, the property owner submitted evidence establishing that the property was partially complete as of the tax lien date at issue. Since there was nothing in the record to indicate that the Auditor considered the partial completion of the property in determining his original value, the Court determined that the property owner met its burden of providing evidence that negated the Auditor’s original value. Therein, the Court held:

When a board of revision adopts the valuation of property presented by the taxpayer over the auditor’s valuation, the burden shifts to the contesting party on appeal to demonstrate the value of the property. When the party challenging a board of revision’s determination fails to present any evidence supporting its valuation or the auditor’s valuation and the only evidence in the record negates that auditor’s valuation, the BTA must determine if there is sufficient evidence in the entire record for the BTA to perform an independent analysis. (Emphasis added.)

The facts in this case are quite different. As set forth above, the property owner failed to submit any competent probative evidence to show that the Auditor overvalued the subject property for tax year 2013. Further, the BOR rejected the property owner’s evidence and claimed value and, instead, performed its own analysis to determine the value of the subject property for tax year 2013. Since there is no competent probative evidence in the record to support the reduction granted by the BOR or to establish that the Auditor overvalued the property, this case is easily distinguishable from *Eastbank*.

Rather, since there is absolutely no evidence in the record to support the value determination made by the BOR or to establish that the Auditor overvalued the subject; the BTA had no choice but to reverse the BOR's decision. In *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564; 2001-Ohio-16, this Court considered a similar fact pattern, where the BOR reduced the value of the property to a value below the Auditor's value but higher than the value claimed by the property owner. The Court defined the issue in that case as "whether the BTA may affirm a valuation made by a board of revision that is different from the auditor's value where the record on appeal to the BTA contains no supporting evidence and no evidence is introduced at the BTA." This is exactly the issue involved herein.

In *Columbus City School Dist. Bd. of Edn.*, the BTA affirmed the decision of the BOR, holding that the BOE had not met its burden on appeal because the BOE failed to present any evidence of value. On appeal, this Court reversed the BTA, holding that the BTA would have been justified in reverting to the Auditor's value, but could not affirm a decision of a BOR that was not supported by sufficient probative evidence:

After reviewing the record and finding that the BOE had not provided the competent and probative evidence needed to meet its burden, the BTA affirmed the BOR's value. If the BOR had retained the auditor's original assessed valuation, the BTA would have been justified in adopting that value. Here the value set by the BOR was its own value, different from that assessed by the auditor.

In *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620 ("*Northpointe*"), P 35, 17 N.E.3d 537, this Court reaffirmed its holding in *Columbus City School Dist. Bd. of Edn.*, *supra*, stating "[t]o be sure, if a board of revision makes a valuation change that is completely unsupported in the record, the BTA may not affirm or adopt it." Thus, this Court's ruling in *Northpointe* reaffirms that "the absence of sufficient

evidence requires the BTA to reverse a reduction or increase ordered by a board of revision." *Id.* at P 21.

In this case, after finding that the BOR's reduction in value was not supported by the record, the BTA should have reinstated the Auditor's value, as there is absolutely no competent probative evidence in the record to enable the BTA to independently determine value or to establish that the Auditor overvalued the subject property. The Appellee property owner's argument that the burden of producing evidence shifted to the BOE before the BTA, not because the property owner produced evidence to establish that the Auditor overvalued the property, but because the BOR erroneously reduced value must be rejected. According to Appellee property owner's rationale, any time a board of revision reduces the value of a property, the board of revision value becomes the default value and the burden of producing evidence to establish a value other than that determined by the board of revision falls on the party challenging the BOR decision. This is true regardless of whether the BOR's reduction was based upon competent probative evidence or sound legal judgment. However, according such a presumption of validity to the BOR decision directly contradicts this Court's holding in *Vandalia-Butler City Sch. Bd. of Educ. v. Montgomery County Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078.

CONCLUSION

For the reasons set forth herein and in the BOE's Merit Brief, the BOE respectfully requests this Court to reverse the decision of the Board of Tax Appeals and to reinstate the Auditor's original appraised value of \$2,199,700 as the correct true value of the subject property for tax year 2013.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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